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HOUSE BILL 2456

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Appleton, Campbell, and Chase

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1            AN ACT Relating to the state's management of the geoduck fishery;  
2 amending RCW 77.70.220, 77.60.070, 79.02.010, 79.140.020, 79.135.030,  
3 79.135.220, 79.135.230, 82.27.010, 82.27.030, and 82.27.070; adding a  
4 new section to chapter 77.12 RCW; adding a new section to chapter 82.27  
5 RCW; creating a new section; repealing RCW 79.135.210; and providing an  
6 effective date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            NEW SECTION.    **Sec. 1.** (1) The legislature finds that  
9 responsibility for the state's management of geoducks has historically  
10 been shared by the department of fish and wildlife and the department  
11 of natural resources. Unlike other species of fish and wildlife, the  
12 department of natural resources has shared in the state's management  
13 responsibilities because geoducks are embedded in lands that the  
14 legislature has asked the department of natural resources to  
15 administer.

16            (2) The legislature further finds that geoducks, as the world's  
17 largest clam, play an invaluable role in the state's aquatic ecosystems  
18 by filtering the water column. As such, geoducks can play an important

1 role in the recovery and maintenance of environmental health in  
2 distressed waters, such as Puget Sound.

3 (3) The legislature further finds that although adult geoduck do  
4 not move from the sediment in which they locate themselves, larval  
5 geoduck are in fact free-swimming individuals, often ranging far from  
6 the location of their parents. In addition, adult geoduck spawn in a  
7 broadcast manner that ensures a wide distribution of their genetic  
8 lineage across wide swatches of their aquatic environment.

9 (4) The legislature further finds that the time has come for a new  
10 model of wildstock geoduck management in the state. This new model  
11 would no longer consider geoducks as an extension of the property in  
12 which they happened to be embedded, but instead manage the animal like  
13 all other fish and wildlife species. This new model would not only  
14 prove superior for maintaining sustainable and harvestable levels of  
15 geoducks, but would also prove that superior management can be attained  
16 by removing the direct link between the economic value of the resource  
17 and the entity charged with the responsibility of managing the  
18 resource.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.12 RCW  
20 to read as follows:

21 (1) On January 1, 2009, the department assumes complete  
22 responsibility for the management of the state's subtidal wildstock  
23 geoduck fishery. The department is responsible for all management  
24 decisions, including specifying the time, place, quantity, and manner  
25 that geoducks may be harvested, communicating with any comanagers of  
26 the fishery, and enforcing fishery rules. Wildstock subtidal geoducks  
27 embedded in state-owned aquatic lands must be considered and managed as  
28 though they were a free-swimming species and may no longer be  
29 considered or managed as an extension of the real property in which  
30 they are embedded.

31 (2) The management program established by the department must be  
32 deemed by the department to be the most effective and responsible for  
33 managing the fishery at a sustainable, harvestable level.

34 (3) All participants in the subtidal wildstock geoduck fishery must  
35 be in possession of a valid geoduck fishery license under RCW  
36 77.70.220.

1           **Sec. 3.** RCW 77.70.220 and 2000 c 107 s 71 are each amended to read  
2 as follows:

3           (1) A person shall not harvest geoduck clams commercially without  
4 a geoduck fishery license. This section does not apply to the harvest  
5 of private sector cultured aquatic products as defined in RCW  
6 15.85.020.

7           ~~((Only a person who has entered into a geoduck harvesting  
8 agreement with the department of natural resources under \*RCW 79.96.080  
9 may hold a geoduck fishery license.~~

10           ~~(3))~~ A geoduck fishery license authorizes no taking of geoducks  
11 outside the boundaries of ~~((the public lands designated in the  
12 underlying harvesting agreement))~~, or beyond the harvest ceiling set  
13 ~~((in the underlying harvesting agreement))~~ by, the department.

14           ~~((4))~~ (3) A geoduck fishery license expires ~~((when the underlying  
15 geoduck harvesting agreement terminates))~~ on a date set by the  
16 department.

17           ~~((5))~~ (4) The director shall determine the number of geoduck  
18 fishery licenses that may be issued ~~((for each geoduck harvesting  
19 agreement))~~, the number of units of gear whose use the license  
20 authorizes, and the type of gear that may be used, subject to RCW  
21 77.60.070. In making those determinations, the director shall seek to  
22 conserve the geoduck resource and prevent damage to its habitat.

23           ~~((6))~~ (5) The fee for a geoduck fishery license must be set as  
24 provided in RCW 77.65.220.

25           (6) The holder of a geoduck fishery license and the holder's agents  
26 and representatives shall comply with all applicable commercial diving  
27 safety regulations adopted by the federal occupational safety and  
28 health administration established under the federal occupational safety  
29 and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590  
30 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations  
31 is a violation of this subsection. For the purposes of this section,  
32 persons who dive for geoducks are "employees" as defined by the federal  
33 occupational safety and health act. A violation of this subsection is  
34 grounds for suspension or revocation of a geoduck fishery license  
35 following a hearing under the procedures of chapter 34.05 RCW. The  
36 director shall not suspend or revoke a geoduck fishery license if the  
37 violation has been corrected within ten days of the date the license  
38 holder receives written notice of the violation. If there is a

1 substantial probability that a violation of the commercial diving  
2 standards could result in death or serious physical harm to a person  
3 engaged in harvesting geoduck clams, the director shall suspend the  
4 license immediately until the violation has been corrected. If the  
5 license holder is not the operator of the harvest vessel and has  
6 contracted with another person for the harvesting of geoducks, the  
7 director shall not suspend or revoke the license if the license holder  
8 terminates its business relationship with that person until compliance  
9 with this subsection is secured.

10 **Sec. 4.** RCW 77.60.070 and 2006 c 144 s 1 are each amended to read  
11 as follows:

12 (1) The director may not authorize a person to take geoduck clams  
13 for commercial purposes (~~((outside the harvest area designated in a  
14 current department of natural resources geoduck harvesting agreement  
15 issued under RCW 79.135.210. The director may not authorize commercial  
16 harvest of geoduck clams))~~) from bottoms that are shallower than  
17 eighteen feet below mean lower low water (0.0. ft.). Vessels  
18 conducting harvest operations must remain seaward of a line two hundred  
19 yards seaward from and parallel to the line of ordinary high tide.  
20 This section does not apply to the harvest of private sector cultured  
21 aquatic products as defined in RCW 15.85.020.

22 (2) Commercial geoduck harvesting shall be done with a hand-held,  
23 manually operated water jet or suction device guided and controlled  
24 from under water by a diver. Periodically, the director shall  
25 determine the effect of each type or unit of gear upon the geoduck  
26 population or the substrate they inhabit. The director may require  
27 modification of the gear or stop its use if it is being operated in a  
28 wasteful or destructive manner or if its operation may cause permanent  
29 damage to the bottom or adjacent shellfish populations.

30 **Sec. 5.** RCW 79.02.010 and 2004 c 199 s 201 are each amended to  
31 read as follows:

32 The definitions in this section apply throughout this title unless  
33 the context clearly requires otherwise.

34 (1) "Aquatic lands" means all state-owned tidelands, shorelands,  
35 harbor areas, and the beds of navigable waters, as that term is defined

1 in (~~chapter 79.90~~) RCW 79.105.060, that are administered by the  
2 department.

3 (2) "Board" means the board of natural resources.

4 (3) "Commissioner" means the commissioner of public lands.

5 (4) "Community and technical college forest reserve lands" means  
6 lands managed under RCW 79.02.420.

7 (5) "Department" means the department of natural resources.

8 (6) "Improvements" means anything considered a fixture in law  
9 placed upon or attached to lands administered by the department that  
10 has changed the value of the lands or any changes in the previous  
11 condition of the fixtures that changes the value of the lands.

12 (7) "Land bank lands" means lands acquired under RCW 79.19.020.

13 (8) "Person" means an individual, partnership, corporation,  
14 association, organization, cooperative, public or municipal  
15 corporation, or agency of a federal, state, or local governmental unit,  
16 however designated.

17 (9) "Public lands" means lands of the state of Washington  
18 administered by the department including but not limited to state  
19 lands, state forest lands, and aquatic lands.

20 (10) "State forest lands" means lands acquired under RCW 79.22.010,  
21 79.22.040, and 79.22.020.

22 (11) "State lands" includes:

23 (a) School lands, that is, lands held in trust for the support of  
24 the common schools;

25 (b) University lands, that is, lands held in trust for university  
26 purposes;

27 (c) Agricultural college lands, that is, lands held in trust for  
28 the use and support of agricultural colleges;

29 (d) Scientific school lands, that is, lands held in trust for the  
30 establishment and maintenance of a scientific school;

31 (e) Normal school lands, that is, lands held in trust for state  
32 normal schools;

33 (f) Capitol building lands, that is, lands held in trust for the  
34 purpose of erecting public buildings at the state capital for  
35 legislative, executive, and judicial purposes;

36 (g) Institutional lands, that is, lands held in trust for state  
37 charitable, educational, penal, and reformatory institutions; and

1 (h) Land bank, escheat, donations, and all other lands, except  
2 aquatic lands, administered by the department that are not devoted to  
3 or reserved for a particular use by law.

4 (12) "Valuable materials" means any product or material on the  
5 lands, such as forest products, forage or agricultural crops, stone,  
6 gravel, sand, peat, and all other materials of value except for  
7 geoducks and other shellfish embedded in aquatic lands, and mineral,  
8 coal, petroleum, and gas as provided for under chapter 79.14 RCW.

9 **Sec. 6.** RCW 79.140.020 and 2005 c 155 s 802 are each amended to  
10 read as follows:

11 (1) The department shall print a list of valuable materials  
12 contained within or upon state-owned aquatic lands, giving appraised  
13 value, character of the land, and such other information as may be of  
14 interest to prospective buyers. The lists must be issued at least four  
15 weeks prior to the date of any sale. The department shall retain for  
16 free distribution in its office in Olympia and the regional offices  
17 sufficient copies of the lists, to be kept in a conspicuous place or  
18 receptacle on the counter of the general and regional office of the  
19 department, and, when requested, shall mail copies of the list as  
20 issued to any applicant.

21 (2) No item not contained within the definition of "valuable  
22 materials" provided in RCW 79.02.010 may be listed or offered for sale.

23 **Sec. 7.** RCW 79.135.030 and 2005 c 155 s 714 are each amended to  
24 read as follows:

25 (1) If a person wrongfully takes shellfish or causes shellfish to  
26 be wrongfully taken from the public lands and the wrongful taking is  
27 intentional and knowing, the person is liable for damages of treble the  
28 fair market retail value of the amount of shellfish wrongfully taken.  
29 If a person wrongfully takes shellfish from the public lands under  
30 other circumstances, the person is liable for damages of double the  
31 fair market value of the amount of shellfish wrongfully taken.

32 (2) For purposes of this section, a person "wrongfully takes"  
33 shellfish from public lands if the person takes shellfish: (a) Above  
34 the limits of any applicable laws that govern the harvest of shellfish  
35 from public lands; (b) without reporting the harvest to the department  
36 of fish and wildlife (~~or the department~~) where the reporting is

1 required by law or contract; (c) outside the area or above the limits  
2 that (~~(an agreement or contract from)~~) the department of fish and  
3 wildlife allows the harvest of shellfish from public lands; or (d)  
4 without a lease or purchase of the shellfish where the lease or  
5 purchase is required by law prior to harvest of the shellfish.

6 (3) The remedies in this section are for civil damages and shall be  
7 proved by a preponderance of the evidence. The department may file a  
8 civil action in Thurston county superior court or the county where the  
9 shellfish were taken against any person liable under this section.  
10 Damages recovered under this section shall be applied in the same way  
11 as the geoduck excise tax revenue is received under (~~geoduck~~  
12 ~~harvesting agreements authorized by RCW 79.135.210~~) section 11 of this  
13 act.

14 (4) For purposes of the remedies created by this section, the  
15 amount of shellfish wrongfully taken by a person may be established  
16 either:

17 (a) By surveying the aquatic lands to reasonably establish the  
18 amount of shellfish taken from the immediate area where a person is  
19 shown to have been wrongfully taking shellfish;

20 (b) By weighing the shellfish on board any vessel or in possession  
21 of a person shown to be wrongfully taking shellfish; or

22 (c) By any other evidence that reasonably establishes the amount of  
23 shellfish wrongfully taken.

24 The amount of shellfish established by (a) or (b) of this  
25 subsection shall be presumed to be the amount wrongfully taken unless  
26 the defendant shows by a preponderance of evidence that the shellfish  
27 were lawfully taken or that the defendant did not take the shellfish  
28 presumed to have been wrongfully taken. Whenever there is reason to  
29 believe that shellfish in the possession of any person were wrongfully  
30 taken, the department or the department of fish and wildlife may  
31 require the person to proceed to a designated off-load point and to  
32 weigh all shellfish in possession of the person or on board the  
33 person's vessel.

34 (5) This civil remedy is supplemental to the state's power to  
35 prosecute any person for theft of shellfish, for other crimes where  
36 shellfish are involved, or for violation of rules of the department of  
37 fish and wildlife.

1       **Sec. 8.** RCW 79.135.220 and 2005 c 155 s 709 are each amended to  
2 read as follows:

3       (~~The department shall designate the areas of state owned~~) All  
4 areas of aquatic lands (~~(that are)~~) must be made available for geoduck  
5 harvesting by licensed geoduck harvesters in accordance with (~~chapter~~  
6 ~~79.90~~) RCW 77.70.220 when the harvesters are operating in accordance  
7 with the time, place, and manner restrictions established by the  
8 department of fish and wildlife.

9       **Sec. 9.** RCW 79.135.230 and 2005 c 155 s 718 are each amended to  
10 read as follows:

11       The department may enter into agreements with the department of  
12 fish and wildlife for the development (~~(of an intensive management plan~~  
13 ~~for geoducks including the development)~~) and operation of a geoduck  
14 hatchery.

15       **Sec. 10.** RCW 82.27.010 and 1995 c 372 s 4 are each amended to read  
16 as follows:

17       As used in this chapter, the following terms have the meanings  
18 indicated unless the context clearly requires otherwise.

19       (1) "Enhanced food fish" includes all species of food fish, except  
20 all species of tuna, mackerel, and jack; shellfish; and anadromous game  
21 fish, including byproducts and parts thereof, originating within the  
22 territorial and adjacent waters of Washington and salmon originating  
23 from within the territorial and adjacent waters of Oregon, Washington,  
24 and British Columbia, and all troll-caught Chinook salmon originating  
25 from within the territorial and adjacent waters of southeast Alaska.  
26 As used in this subsection, "adjacent" waters of Oregon, Washington,  
27 and Alaska are those comprising the United States fish conservation  
28 zone; "adjacent" waters of British Columbia are those comprising the  
29 Canadian two hundred mile exclusive economic zone; and "southeast  
30 Alaska" means that portion of Alaska south and east of Cape Suckling to  
31 the Canadian border. For purposes of this chapter, point of  
32 origination is established by a document which identifies the product  
33 and state or province in which it originates, including, but not  
34 limited to fish tickets, bills of lading, invoices, or other  
35 documentation required to be kept by governmental agencies.

1 (2) "Commercial" means related to or connected with buying,  
2 selling, bartering, or processing.

3 (3) "Possession" means the control of enhanced food fish or geoduck  
4 by the owner and includes both actual and constructive possession.  
5 Constructive possession occurs when the person has legal ownership but  
6 not actual possession of the enhanced food fish or geoduck.

7 (4) "Anadromous game fish" means steelhead trout and anadromous  
8 cutthroat trout and Dolly Varden char and includes byproducts and also  
9 parts of anadromous game fish, whether fresh, frozen, canned, or  
10 otherwise.

11 (5) "Landed" means the act of physically placing enhanced food fish  
12 or geoduck (a) on a tender in the territorial waters of Washington; or  
13 (b) on any land within or without the state of Washington including  
14 wharves, piers, or any such extensions therefrom.

15 (6) "Geoduck" means all subtidal, wildstock geoduck clams harvested  
16 by an individual in possession of a geoduck fishery license issued by  
17 the department of fish and wildlife under RCW 77.70.220.

18 NEW SECTION. Sec. 11. A new section is added to chapter 82.27 RCW  
19 to read as follows:

20 (1) In addition to all other taxes, licenses, or fees provided by  
21 law there is established an excise tax on the commercial possession of  
22 geoduck as provided in this chapter. The tax is levied upon and must  
23 be collected from the owner of the geoduck whose possession constitutes  
24 the taxable event. The taxable event is the first possession in  
25 Washington by an owner after the geoduck has been landed. Processing  
26 and handling of geoduck by a person who is not the owner is not a  
27 taxable event to the processor or handler.

28 (2) The measure of the tax is the value of the geoduck at the point  
29 of landing.

30 (3) The tax shall be equal to the measure of the tax multiplied by  
31 a rate set by the department. The department must set a rate that  
32 equals the average approximate value, either per pound or per  
33 individual geoduck, received by the department of natural resources for  
34 geoduck harvests in the five years prior to the effective date of this  
35 section. The department shall readjust the rate as necessary to  
36 maintain the present value of revenues at an approximately equivalent  
37 level.

1 (4) All revenue received by the department under this section,  
2 except for the minimum revenue necessary to cover the department's  
3 expense for administering this section, must be provided to the  
4 department of natural resources and distributed under RCW 79.64.040 as  
5 though it was revenue derived from a transaction involving state-owned  
6 aquatic lands.

7 **Sec. 12.** RCW 82.27.030 and 1995 2nd sp.s. c 7 s 1 are each amended  
8 to read as follows:

9 The tax imposed by RCW 82.27.020 shall not apply to: (1) Enhanced  
10 food fish or geoduck originating outside the state which enters the  
11 state as (a) frozen enhanced food fish or (b) enhanced food fish  
12 packaged for retail sales; (2) the growing, processing, or dealing with  
13 food fish or shellfish which are raised from eggs, fry, or larvae and  
14 which are under the physical control of the grower at all times until  
15 being sold or harvested; and (3) food fish, shellfish, anadromous game  
16 fish, and byproducts or parts of food fish shipped from outside the  
17 state which enter the state, except as provided in RCW 82.27.010,  
18 provided the taxpayer must have documentation showing shipping  
19 origination of fish exempt under this subsection to qualify for  
20 exemption. Such documentation includes, but is not limited to fish  
21 tickets, bills of lading, invoices, or other documentation required to  
22 be kept by governmental agencies.

23 **Sec. 13.** RCW 82.27.070 and 2005 c 110 s 4 are each amended to read  
24 as follows:

25 Except as provided in section 11 of this act, all taxes collected  
26 by the department of revenue under this chapter shall be deposited in  
27 the state general fund except for the excise tax on anadromous game  
28 fish, which shall be deposited in the state wildlife ((fund)) account,  
29 and, during the period January 1, 2000, to December 31, 2010, twenty-  
30 five forty-sixths of the revenues derived from the excise tax on sea  
31 urchins collected under RCW 82.27.020 shall be deposited into the sea  
32 urchin dive fishery account created in RCW 77.70.150, and twenty-five  
33 forty-sixths of the revenues derived from the excise tax on sea  
34 cucumbers collected under RCW 82.27.020 shall be deposited into the sea  
35 cucumber dive fishery account created in RCW 77.70.190.

1        NEW SECTION.   **Sec. 14.**   RCW 79.135.210 (Geoduck harvesting--  
2   Agreements, regulation) and 2005 c 155 s 708, 2005 c 113 s 3, 2003 c 39  
3   s 43, 1990 c 163 s 4, & 1982 1st ex.s. c 21 s 141 are each repealed.

4        NEW SECTION.   **Sec. 15.**   This act takes effect January 1, 2009.

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